IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.171 OF 2005
IN
SUMMARY SUIT NO.370 OF 2005

M/s.Pfm AG. Germany ....Plaintiff
V/s.
Faisal Kapadi ....Defendant

Mr.N. Pandit with Ms.Jyoti Taksale i/b M/s.Joy Legal Consultant for the Plaintiff.
Mr.Tushar Garodia for the Defendant.

CORAM : S.J. VAZIFDAR, J.
DATED : 12TH DECEMBER, 2005.

P.C. :

1. The suit is filed to recover the price of the goods sold and delivered by the Plaintiff to the Defendant on the terms and conditions contained in an invoice dated 27th November, 2002.

2. It is not denied that the goods were received by the Defendant. The only contention is that the Defendant and his brother had certain dealings with the Plaintiff and the Defendant was entitled to adjustment of certain amounts for the reasons I shall now refer to. On behalf of the Defendant the following correspondence was relied upon. In e-mail messages dated 16th July, 2003 and 19th July, 2003,

the Defendant referred to the transactions between the Plaintiff and his brother. As far as these transactions are concerned, the Defendant would not be entitled to any credit for he had nothing to do with his brother's proprietary concern.

3. By an e-mail dated 1st August, 2003, the Defendant informed the Plaintiff that one Shreesh Thosar had taken some of the goods back from the Defendant for demonstration purpose but had not returned the said goods. The Plaintiff by an e-mail message dated 1st August, 2003 asked the Defendant whether the said Shreesh had returned the goods and agreed to follow up on this matter. The earlier e-mail message dated 17th July, 2003 from the Plaintiff indicates that the Defendant forwarded the said goods sold to him by the Plaintiff to the said Shreesh without informing the Plaintiff.

4. Ultimately by an e-mail message dated 20.1.2004 the Plaintiff informed the Defendant that it was still waiting for inventory list of the goods which the Defendant would like to return. The Plaintiff further stated that when the same was received, they would issue the necessary credit note.

5. Admittedly the inventory list of the goods which the Defendant wanted to return, were never forwarded. In other words, the Defendant retained the goods. The argument was the Defendant would have forwarded the inventory list only upon receiving the Blades from the said Shreesh.

6. There is nothing on record to support the Defendant's case in this regard. Nor is there any material to suggest that the Plaintiff had orally agreed that the list of the goods to be returned should be forwarded upon the said Shreesh returning the goods. Further the Defendant had not even quantified the value of these nine Blades which he claims to be entitled from the said Shreesh.

7. In the circumstances, Leave to defend granted to the Defendant conditional upon the Defendant depositing in this Court a sum of Rs.4,00,000/- within twelve weeks from today.

8. In the event the Defendant deposits the aforesaid amount, the suit to stand transferred to the list of Commercial Causes. The Defendants to file their written statement within 30 days. Discovery and Inspection within four weeks thereafter.

9. In the event the Defendant fails to deposit the aforesaid amount, liberty to the Plaintiffs to apply for further orders.

10. On the said deposit being made, the Prothonotary and Senior Master to invest the same in any Nationalised Bank initially for a period of two years and shall renew the same thereafter for a period of one year from time to time.

11. Summons for Judgment stands disposed of accordingly.